

AMENDED IN ASSEMBLY JUNE 27, 2006

AMENDED IN SENATE MAY 2, 2006

AMENDED IN SENATE APRIL 4, 2006

SENATE BILL

No. 1716

Introduced by Senator Bowen

(Principal coauthor: Assembly Member Jones)

February 24, 2006

An act to amend Sections 1850 and 1851 of, and to add Section 1051 to, the Probate Code, and to add Section 5372 to the Welfare and Institutions Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 1716, as amended, Bowen. Conservatorships.

Existing law requires the court to review each conservatorship one year after the appointment of the conservator and biennially thereafter, except as specified. Existing law also requires the court investigator to visit the conservatee when the court review of the conservatorship is required, and to determine, among other things, whether the present conservator is acting in the best interests of the conservatee.

This bill would authorize the court to order a review of the conservatorship at any other time.

The bill would also require the court investigator, in ~~evaluating~~ *determining* whether the conservator is acting in the best ~~interests~~ *interest* of the conservatee, to include ~~the appropriateness an examination~~ of the conservatee's placement, ~~the conservatee's quality of care, and the conservatee's financial condition~~ *finances*.

The bill would also prohibit, commencing ~~July 1, 2007~~ *January 1, 2008*, and except as specified, ex parte communications between any

party or attorney for the party and the court concerning a subject raised in pleadings filed pursuant to the Probate Code, and in proceedings to establish a conservatorship for persons who are gravely disabled as a result of a mental disorder or chronic alcoholism. The bill would require the Judicial Council to adopt a rule of court to implement these provisions by ~~July 1, 2007~~ January 1, 2008.

The bill would become operative only if AB 1363, SB 1116, and SB 1550 are enacted and become effective on or before January 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1051 is added to the Probate Code, to
2 read:

3 1051. (a) In the absence of a stipulation to the contrary
4 between parties who have filed pleadings in a proceeding under
5 this code, there shall be no ex parte communications between any
6 party, or attorney for the party, and the court concerning a subject
7 raised in those pleadings, except as permitted or required by law.

8 (b) Notwithstanding subdivision (a), in any case upon which
9 the court has exercised its jurisdiction, the court may refer to the
10 court investigator or take other appropriate action in response to
11 an ex parte communication regarding either or both of the
12 following: (1) a fiduciary, as defined in Section 39, about the
13 fiduciary's performance of his or her duties and responsibilities,
14 and (2) a person who is the subject of a conservatorship or
15 guardianship proceeding under Division 4 (commencing with
16 Section 1400) of the Probate Code. Any action by the court
17 pursuant to this subdivision shall be consistent with due process
18 and the requirements of this code. The court shall disclose the ex
19 parte communication to all parties and counsel. The court may,
20 for good cause, dispense with the disclosure if necessary to
21 protect the ward or conservatee from harm.

22 (c) The Judicial Council shall, on or before ~~July 1, 2007~~
23 January 1, 2008, adopt a rule of court to implement this section.

24 (d) Subdivisions (a) and (b) of this section shall become
25 operative on ~~July 1, 2007~~ January 1, 2008.

26 SEC. 2. Section 1850 of the Probate Code is amended to read:

1 1850. (a) Except as provided in subdivision (b), each
2 conservatorship initiated pursuant to this part shall be reviewed
3 by the court one year after the appointment of the conservator
4 and biennially thereafter. The court may, on its own motion or
5 upon request, order a review of the conservatorship at any other
6 time.

7 (b) This chapter does not apply to either of the following:

8 (1) A conservatorship for an absentee as defined in Section
9 1403.

10 (2) A conservatorship of the estate for a nonresident of this
11 state where the conservatee is not present in this state.

12 SEC. 3. Section 1851 of the Probate Code is amended to read:

13 1851. (a) When court review is required pursuant to Section
14 1850, the court investigator shall visit the conservatee. The court
15 investigator shall inform the conservatee personally that the
16 conservatee is under a conservatorship and shall give the name of
17 the conservator to the conservatee. The court investigator shall
18 determine whether the conservatee wishes to petition the court
19 for termination of the conservatorship, whether the conservatee is
20 still in need of the conservatorship, whether the present
21 conservator is acting in the best interests of the conservatee, and
22 whether the conservatee is capable of completing an affidavit of
23 voter registration. In—~~evaluating~~ *determining* whether the
24 conservator is acting in the best—~~interests~~ *interest* of the
25 conservatee, the court—~~investigator~~ *investigator's evaluation* shall
26 include—~~the appropriateness~~ *an examination* of the conservatee's
27 placement, the conservatee's quality of care, including physical
28 and mental treatment, and the conservatee's—~~financial condition~~
29 *finances*. If the court has made an order under Chapter 4
30 (commencing with Section 1870), the court investigator shall
31 determine whether the present condition of the conservatee is
32 such that the terms of the order should be modified or the order
33 revoked.

34 (b) The findings of the court investigator, including the facts
35 upon which the findings are based, shall be certified in writing to
36 the court not less than 15 days prior to the date of review. A copy
37 of the report shall be mailed to the conservator and to the
38 attorneys of record for the conservator and conservatee at the
39 same time it is certified to the court.

1 (c) In the case of a limited conservatee, the court investigator
2 shall make a recommendation regarding the continuation or
3 termination of the limited conservatorship.

4 (d) The court investigator may personally visit the conservator
5 and other persons as may be necessary to determine whether the
6 present conservator is acting in the best interests of the
7 conservatee.

8 (e) The report required by this section shall be confidential and
9 shall be made available only to parties, persons given notice of
10 the petition who have requested the report or who have appeared
11 in the proceeding, their attorneys, and the court. The court shall
12 have discretion at any other time to release the report if it would
13 serve the interests of the conservatee. The clerk of the court shall
14 make provision for limiting disclosure of the report exclusively
15 to persons entitled thereto under this section.

16 SEC. 4. Section 5372 is added to the Welfare and Institutions
17 Code, to read:

18 5372. (a) The provisions of Section 1051 of the Probate
19 Code shall apply to conservatorships established pursuant to this
20 chapter.

21 (b) The Judicial Council shall, on or before ~~July 1, 2007~~
22 *January 1, 2008*, adopt a rule of court to implement this section.

23 (c) Subdivision (a) of this section shall become operative on
24 ~~July 1, 2007~~ *January 1, 2008*.

25 SEC. 5. *This act shall become operative only if Assembly Bill*
26 *1363, Senate Bill 1116, and Senate Bill 1550 of the 2005–06*
27 *Regular Session are enacted and become effective on or before*
28 *January 1, 2007.*